IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL REVISION APPLICATION No 1129 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 to 5 No.

LAXMANBHAI B VAGHELA

Versus

STATE OF GUJARAT

Appearance:

MR AJ PATEL for Petitioner

MR SJ DAVE, APP for Respondent No. 1

Notice served for respondent No.2.

CORAM : MR.JUSTICE R.P.DHOLAKIA

Date of decision: 16/06/2000

ORAL JUDGEMENT

The petitioner-original accused No.5 of Criminal Case No.2617 of 1990, filed an application Exh.4 before the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, and requested the Court that he may be discharged from the case on the ground that before filing the complaint, the complainant has not obtained sanction under Section 322 (A) of the Panchayats Act, 1961.

2. After hearing learned counsel for the respective parties, the learned Chief Judicial Magistrate has passed the order upon application Exh.4 and rejected the same on merits on 6-7-1991. Against that order, the petitioner-original accused No.5 has filed present Criminal Revision Application and prayed for discharge from the case.

3. I have heard learned counsel Mr. A.J.Patel for the petitioner and learned A.P.P. Mr. S.J.Dave, for the respondent No.1-State. Respondent No.2-original complainant has been served, but he chosen not to remain present before the Court either personally or through his advocate. Learned counsel for the petitioner has mainly argued that the Court below has wrongly come to the conclusion that the act of the petitioner-accused No.5 is such for which no sanction is required to be obtained before filing the complaint. He has argued that the Court below has wrongly come to the conclusion that petitioner illegally trespassed in the house of third party and for which sanction to file a complaint against the petitioner is not required. He has drawn my attention towards Annexure A to G of the petition and argued that the petitioner was elected as a member of Ghatlodiya Nagar Panchayat and at the relevant time he was the Chairman of the said Panchayat and being the Chairman of Ghatlodiya Nagar Panchayat he was obliged to see that the building which was to be constructed on the lands within the limits of Ghatlodiya Nagar Panchayat should be constructed in accordance with the Building Regulations of the Panchayat as per the rules and regulations of the Urban Development Authority. He has further argued that the respondent No.2 had started illegal construction for which panchnama of the construction in question was prepared in the presence of the panchas on 1-3-93, and thereafter, show cause notices were served to the Chairman of the society on 2-3-90 (Annexure B and C of the petition). He has further argued that even notices (Annexure D and E) were fixed on the site of the construction also and then also the Chairman of the society and the contractor refused to pay any heed. Therefore, ultimately Ghatlodiya Nagar Panchayat passed a resolution No.1117 in the meeting held on 21-3-90 and resolved to demolish the construction in question under Section 93 of the Panchayat Act. He has also drawn my attention to a copy of the resolution (Annexure F of the petition) passed by the Panchayat. He has further argued that according to the complainant the alleged incident took place on 22-3-90 at 11-00 p.m. and complainant had filed Special Civil Application

No.2607 of 1990 before the Hon'ble High Court of Gujarat at Ahmedabad through his advocate Shri Oza on the same day and relying upon the copy of Special Civil Application (Annexure I of the petition) he has argued that though the incident has taken place at 11-00 o'clock, no slightest averments regarding the alleged incident have been made in Special Civil Application No.2607 of 1990, and therefore, according to him it is an after thought complaint filed at 12-00 p.m. and relying upon the above document, he argued that the petitioner, who was the Chairman of the Panchayat, at the relevant time gone there along with police for the purpose of discharging his duties as a Chairman of the Panchayat, and therefore, before filing the criminal complaint, sanction under Section 322 (A) of the Panchayats Act, 1961, is required to be obtained.

4. I have gone through the order passed by the Court below wherein the Court has come to the conclusion which is not based on any material aspect of the matter, and therefore, the Court below rejected the application Exh.4, submitted by the petitioner, only on wrong presumption, which is having no base, and therefore, the order passed by the Court below Exh.4 in Criminal Case No.2617 of 1990 is required to be quashed and set aside and the matter is required to be remanded back to the Court belowwith a direction to dispose of the discharge application Exh.4 on merits without being influenced by this order passed by this Court, after giving an opportunity to the concerned parties.

5. As a result of the foregoing discussion, the order passed by the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur, below discharge application Exh.4 in Criminal Case No.2617 of 1990, is quashed and set aside and the matter is remanded back to the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Mirzapur with a direction to dispose of the discharge application Exh.4 on merits after giving an opportunity to the parties, as expeditiously as possible . There shall be no order as to costs. Rule made absolute to the aforesaid extent.

16-6-2000 (R.P.Dholakia, J.)

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